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E.O. 12958: DECL: 01/30/17
TAGS: [PTER](#) [PHUM](#) [PINS](#) [PREL](#) [KAWC](#) [AF](#)
SUBJECT: DEPUTIES BRIEFING ON DETAINEE LEGAL
FRAMEWORK

REF: A. STAMILIO-BUCK/DUSKA
1/12-1/24 EMAILS
[1](#)B. KABUL 00068

CLASSIFIED BY S/WCI DEPUTY SANDRA L.
HODGKINSON, REASONS 1.4 (B) AND (D).

[1](#)1. (U) This is an action request - see
paragraph 4.

[1](#)2. (S) The Deputies Committee (DC) tasked the
State Department with the following action in
its November 29 Summary of Conclusions (SOC):
"Embassy Kabul will obtain from the Afghan
Ministry of Justice its written articulation
of the legal basis on which it will detain
Afghan enemy combatants. In particular, the
Ministry should be requested to identify the
relevant legal system (e.g., criminal,
military), the review process envisioned, and
whether individuals will be retained at the
renovated Pol-e-Charki facility." The
Detainee PCC is preparing a briefing to
update the DC on the Afghan detainee legal
framework. The briefing will be presented at
a DC scheduled for February 7.

[1](#)3. (S) Per refs A and B, the GOA has convened
an interagency group to assess the legal
basis for detaining each of six "test case"
detainees. Per ref A, Post expects the GOA
to provide a written assessment of the legal
basis for detaining each of the six detainees
o/a February 15. The GOA's written
assessment also will describe the review
board it intends to establish to assess the
legal bases upon which the GOA will hold
detainees upon their transfer from DoD
custody and control to the Afghan National
Detention Facility (ANDF, formerly Pol-e-
Charki Block IV).

[1](#)4. (S) Action Request: Recognizing that the
GOA likely will not complete its review of
the six test cases in advance of the February
7 DC, but anticipating that the process of
evaluating the cases of these six detainees
has advanced the GOA's thinking on the legal
bases for detaining enemy combatants
transferred to ANDF, Department requests that
Post provide a front-channel report updating
progress on the action tasked in the DC's
November 29 SOC, in as much detail as
possible, no later than February 5, so the
PCC can include the information in its
briefing at the February 7 DC.

[1](#)5. (S/NF) Additionally, Department provides

the following responses to questions Post raised in ref A:

-- (S) The most important aspect of the Afghan detainee legal framework is the legal basis for detaining security detainees -- i.e., those individuals that the GOA is unlikely or unable to prosecute in the Afghan criminal justice system, but rather would seek to continue detaining for national security reasons. (Note: Only one of the six test cases appears to be a case the GOA would be unlikely/unable to prosecute in the Afghan criminal justice system. End Note.)

-- (S) To the extent possible, the USG intends to continue providing the GOA the same type of information for future detainee transfers that it provided for the six test cases. (Note: Department will attempt to address in the Detainee PCC Post's concerns about the time and resources required to prepare Dari translations of documents provided to the GOA. End Note.)

-- (S) The USG anticipates that the GOA will articulate the requisite legal bases for detaining/prosecuting the various types of detainees transferred from DoD custody and control to ANDF in the context of its written assessment of the six test cases. We anticipate that this written assessment will be instructive as to the GOA's views on the general legal framework for future transfers. Once this framework is satisfactorily established, the USG will continue to share information with the GOA to facilitate the GOA review board's determination of the legal basis for detaining/prosecuting each detainee, but the USG does not anticipate that the GOA would provide the USG an assessment of the possibility of detaining/prosecuting a particular detainee prior to his transfer.

-- (S/NF) The issue of back-filling space at Bagram with detainees from Guantanamo is under discussion in the Detainee PCC. The PCC will present the pros and cons, and various departments'/agencies' perspectives, to the Deputies Committee on February 7. Department welcomes Post's views on the matter. (Note: Post should not/not share with the GOA the fact that this issue is under discussion. End Note.)

16. (SBU) State point of contact for this request is S/WCI - Mark Stamilio, phone: (202) 647-5234, email: StamilioMA2@state.sgov.gov. DoD point of contact for this request is DASD-DA - Tony Ricci, phone: (703) 571-2635, email: Anthony.Ricci@osd.smil.mil.
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